



2019 WISCONSIN ACT 185
Q & A REGARDING PROPERTY TAX INSTALLMENT PAYMENTS
April 20, 2020

On April 15, 2020, Governor Evers signed 2019 Wisconsin Act 185 (“Act 185”) into law, with an effective date of April 17, 2020. Act 185 provides a number of relief measures addressing the ongoing COVID-19 pandemic. One relief measure that particularly impacts counties is the provision in Section 105(25) of Act 185 that allows a taxation district (city, village or town) to waive interest and penalties on property tax installment payments due on April 1 or after so long as the payments are made on or before October 1. The waiver is only available if both a county and a taxation district adopt a resolution authorizing the waiver. Importantly, if a county adopts a resolution authorizing the waiver, the August 20 settlement is not for the full amount of taxes owed each taxing jurisdiction (every entity authorized by law to impose a tax), but only those amounts actually collected by July 31. As one might imagine, a delay in property tax installment payments and the statutory August settlement impacts other statutory deadlines and requirements.

The Wisconsin Counties Association and its general counsel, von Briesen & Roper, s.c., have received many questions surrounding Act 185’s implementation. As well, the Association has engaged in extensive discussions with our counterparts at the League of Wisconsin Municipalities and the Wisconsin Towns Association, as well as the Department of Revenue. Our general counsel has prepared the Q & A below to provide information related to Section 105(25) of Act 185. Based upon the discussions with the Department of Revenue, the Association expects the Department to agree with the analysis below. The Association would like to thank the League and Towns Association for their work in collaborating on the analysis.

This information below should be reviewed carefully with corporation counsel to ensure county compliance with other applicable laws and regulations, including its own policies and procedures.

Q: What does Act 185 say with respect to waiving interest and penalties on property tax installment payments?

A: *The language is found in Section 105(25), Nonstatutory Provisions, on page 23 of Act 185 and provides as follows:*

(25) INTEREST ON LATE PROPERTY TAX PAYMENTS. Notwithstanding ss. 74.11, 74.12, and 74.87, for property taxes payable in 2020, after making a general or case-by-case finding of hardship, a taxation district may provide that an installment payment that is due and payable after April 1, 2020, and is received after its due date shall not accrue interest or penalties if the total amount due and payable in 2020 is paid on or before October 1, 2020. Interest and penalties shall accrue from October 1, 2020, for any property taxes payable in 2020 that are delinquent after October 1, 2020. A taxation district may not waive interest and

penalties as provided in this subsection unless the county board of the county where the taxation district is located first adopts a resolution authorizing such waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution. A county that has adopted a resolution authorizing the waiver of interest and penalties under this subsection shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under s. 74.29 (1), and settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020, settlement shall be distributed proportionally to the underlying taxing jurisdictions.

Q: Is the waiver available to all property taxpayers or only those who can show “hardship?”

A: The provision allows communities to make a “general or case-by-case finding of hardship” and on that basis provide that late installment payments due and payable after April 1, 2020, do not accrue interest or penalties as long as the total amount owed is paid by October 1, 2020. Accordingly, the decision to waive interest and penalties can be applied “generally” across the entire community or for individual taxpayers on a case-by-case basis. As noted below, however, the Association is strongly urging counties seeking to authorize the waiver to authorize only a general (across-the-board) waiver because case-by-case waiver present significant legal and administrative challenges.

Q: May a city, village or town unilaterally determine to waive interest and penalties on late property tax installment payments due after April 1 without any action by the county board?

A: No. A municipality can only choose to waive interest and penalties if the county board in which the property is located first adopts a resolution that allows for such a waiver. The county resolution must identify criteria to determine hardship justifying the waiver. A city, village or town that wants to waive interest and penalties on a late installment payment must then adopt a similar resolution. It is important to note that Act 185 requires approval from both the county and the “taxation district,” which is defined as the city, village or town. Even though Act 185 impacts all “taxing jurisdictions,” (defined as those entities, including school districts, authorized to impose a tax) all taxing jurisdictions need not approve the waiver for the waiver to become effective.

Q: Is it better for a county to authorize a general waiver or a case-by-case waiver?

A: While Act 185 allows a county to authorize a city, village or town to engage in a case-by-case determination of hardship that would qualify a property taxpayer for the waiver, the Association recommends against waiving interest and penalties on a case-by-case basis. In addition to the administrative burdens associated with the application and evaluation process associated with a case-by-case approach, there are constitutional concerns surrounding tax uniformity and application of principles of equal protection under the law.

Q: In communities that have not adopted a multiple installment option under Wis. Stat. § 74.12, where a taxpayer has chosen to pay his or her taxes in two equal installments (one on January 31 and the remainder on July 31), does the waiver provision in Act

185 allow a community to waive interest and penalties on the July 31 installment payment?

A: *Yes. Section 74.11 is the statute allowing a property taxpayer to pay in two equal installments (January 31 and July 31.) Act 185 explicitly identifies Wis. Stat. §74.11 as a section subject to Act 185's waiver provision. Therefore, the July 31 second payment is considered an "installment" that is eligible for delay under Act 185. However, it is important to note that Act 185 does not apply to installments due prior to April 1 and does not excuse prior or existing delinquencies.*

Q: May a property taxpayer that missed or was late paying a property tax payment installment due prior to April 1 have the interest and penalties that have accrued as a result of the delinquency waived or refunded?

A: *No. Act 185 does not apply retroactively to missed or late payments for installment payments due and payable prior to April 1. The interest and penalties on those delinquencies cannot be waived and continue to accrue until the property tax bill is paid.*

Q: If a county adopts a resolution authorizing a taxation district (city, village or town) to waive interest and penalties on late property tax installment payments due after April 1, what happens to the required August 20 settlement when the county treasurer distributes property tax revenues to the other taxing jurisdictions?

A: *A county that has adopted a resolution authorizing the waiver of interest and penalties must settle any taxes, interest, and penalties collected on or before July 31 on August 20, the usual settlement date, as provided under Wis. Stat. § 74.29 (1). The August 20 settlement must be distributed proportionally to all the underlying taxing jurisdictions based upon the payments actually received by July 31. The county must then settle the remaining unpaid taxes, interest, and penalties on September 20. While Act 185 does not specifically provide that a county may, in its discretion, choose to settle on the full tax roll on August 20 as would be the normal procedure, there seems to be little to no risk in doing so if that is what a county chooses to do. No matter what process is chosen, counties are encouraged to consult with all taxing jurisdictions in the county to understand the ramifications associated with modifying the August settlement procedure.*

Q: What happens if a county adopts a resolution authorizing the waiver, but one or more taxation districts do not grant the waiver?

A: *If a taxation district does not adopt a resolution authorizing the waiver similar to the county's resolution, property taxes on properties within that taxation district are due according to the normal schedule. However, the county's resolution will trigger the change in the August 20 settlement such that the county will be required to settle on only those property tax payments collected on or before July 31. The balance of taxes will then be settled on September 20. The delay in settlement could cause cash flow issues for taxing jurisdictions in the county.*

Q: If a property taxpayer takes advantage of the interest and penalties waiver authorized under Act 185 (and the county and municipal resolutions) and pays an installment(s) by October 1, but after the previously-established deadline, are the property taxes still considered “delinquent” because they were not received by the previously-established deadline?

A: *Act 185 provides that for property tax payments delayed as authorized in Act 185, “an installment payment that is due and payable after April 1, 2020, and is received after its due date shall not accrue interest or penalties if the total amount due and payable in 2020 is paid on or before October 1, 2020.” Act 185 does not address delinquencies or the tax certificate process in Wis. Stat. § 74.57(1), which states that “[a]nnually, on September 1, the county treasurer shall issue to the county a tax certificate which includes all parcels of real property included in the tax roll for which real property taxes, special charges, special taxes or special assessments remain unpaid at the close of business on August 31.” While the statutory language is mandatory in that a county treasurer “shall” issue the certificate on September 1, including in the certificate those parcels for which tax payments have been delayed as authorized under Act 185, doing so would frustrate the purpose of Act 185. Therefore, despite the seemingly plain language of Wis. Stat. § 74.57(1), the Association believes that a county treasurer would be authorized to omit those parcels from the tax certificate issued on September 1.*

Q: What options exist for counties to address short-term cash flow needs as a result of the delay in property tax payments?

A: *The Association is working with von Briesen & Roper, s.c., financial professionals, BCPL and the State Treasurer’s office to review options for cash flow and short-term borrowing. The Association will keep you apprised as those discussions unfold.*